

# **EXHIBIT F**

UNITED STATES COURT OF APPEALS  
FOR THE FIRST CIRCUIT

PEAJE INVESTMENTS, LLC,  
Movant, Appellant,  
-vs- Case No. 16-2377  
ALEJANDRO GARCIA-PADILLA, ET AL,  
Respondents, Appellees.

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PEAJE INVESTMENTS, LLC  
Movant, Appellee,  
-vs- Case No. 16-2430  
ALEJANDRO GARCIA-PADILLA, ET AL,  
Respondents, Appellees,

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FINANCIAL OVERSIGHT AND MANAGEMENT BOARD,  
Movant, Appellant.

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DIGITAL TRANSCRIPTION  
ORAL ARGUMENT HELD BEFORE  
JEFFREY R. HOWARD, CHIEF JUDGE  
O. ROGERIEE THOMPSON, CIRCUIT JUDGE  
WILLIAM J. KAYATTA, JR., CIRCUIT JUDGE  
WEDNESDAY, JANUARY 4, 2017

Job No. 4622

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-vs- Case No. 16-2377

ALEJANDRO GARCIA-PADILLA, ET AL,

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Job No. 4622

1 ASSURED GUARANTY CORPORATION; ASSURED GUARANTY  
2 MUNICIPAL CORPORATION,

3 Plaintiffs, Appellees,

4 -vs- Case No. 16-2431

5 COMMONWEALTH OF PUERTO RICO, ET AL,

6 Defendants, Appellees

7 -----

8 FINANCIAL OVERSIGHT AND MANAGEMENT BOARD,

9 Movant, Appellant

10 -----

11 ALTAIR GLOBAL CREDIT OPPORTUNITIES FUN (A), LLC,

12 ET AL,

13 Movants, Appellants,

14 CLAREN ROAD CREDIT MASTER FUND, LTD., ET AL,

15 Movants,

16 -vs- Case No. 16-2433

17 ALEJANDRO GARCIA-PADILLA, in his official

18 capacity as the Governor of Puerto Rico, et al,

19 Respondents, Appellees

20 -----

21 FINANCIAL OVERSIGHT AND MANAGEMENT BOARD,

22 Movant, Appellant

23 -----

24

25

1 BRIGADE LEVERAGED CAPITAL STRUCTURES FUND, LTD.,  
2 ET AL

3 Plaintiffs, Appellees,

4 -vs- Case No. 16-2437

5 ALEJANDRO GARCIA-PADILLA, in his official  
6 capacity as the Governor of Puerto Rico, et al,

7 Defendants, Appellees

8 GOVERNMENT DEVELOPMENT BANK OF PUERTO RICO,

9 Defendant,

10 -----

11 FINANCIAL OVERSIGHT AND MANAGEMENT BOARD,

12 Movant, Appellant.

13 -----

14 NATIONAL PUBLIC FINANCE GUARANTEE CORPORATION,

15 Plaintiff, Appellee,

16 -vs- Case No. 16-2438

17 ALEJANDRO J. GARCIA-PADILLA, et al,

18 Defendants, Appellees,

19 -----

20 FINANCIAL OVERSIGHT AND MANAGEMENT BOARD,

21 Movant, Appellant.

22 -----

1 US BANK TRUST NATIONAL ASSOCIATION,

2 Plaintiff, Appellee,

3 -vs- Case No. 16-2439

4 ALEJANDRO GARCIA-PADILLA, in his official

5 capacity as the Governor of Puerto Rico, et al,

6 Defendants, Appellees

7 -----

8 FINANCIAL OVERSIGHT AND MANAGEMENT BOARD,

9 Movant, Appellant.

10 -----

11 DIONISIO TRIGO-GONZALEZ, ET AL,

12 Plaintiffs, Appellees,

13 CARMEN FELICIANO VARGAS, ET AL,

14 Plaintiffs,

15 -vs- Case No. 16-2440

16 ALEJANDRO GARCIA-PADILLA, in his official

17 capacity as the Governor of Puerto Rico, et al,

18 Defendants, Appellees

19 -----

20 FINANCIAL OVERSIGHT AND MANAGEMENT BOARD,

21 Movant, Appellant.

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(None.)

EXHIBITS

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(None.)

1 Wednesday, January 4, 2017

2 THE CLERK: The first case today is  
3 16-2377, Peaje Investments LLC versus Alejandro  
4 Garcia-Padilla et al and consolidated cases. And  
5 Number 16-2437, Brigade Leveraged Capital Structures  
6 Fund V Alejandro J. Garcia-Padilla et al and  
7 consolidated cases.

8 MR. BRUNSTAD: Good morning, your  
9 Honor, Eric Brunstad on behalf of Peaje Investments.  
10 If I may have about three minutes for rebuttal time,  
11 your Honor?

12 THE COURT: Yes.

13 MR. BRUNSTAD: Thank you. First of  
14 all, we appreciate being here on expedited review.  
15 And in the time that I have this morning I'd like to  
16 touch upon three things. The first is the harm that  
17 Peaje is suffering as a result of the taking of its  
18 collateral.

19 The second is why adequate protection  
20 is the correct standard of cause here.

21 And the third is why the District  
22 Court erred in failing to hold a hearing.

23 Focusing on harm, Peaje holds  
24 \$63 million in limited recourse bonds. By limited  
25 recourse, I mean that ordinarily Peaje can look only

1 to its collateral, the Toll Revenues to be paid.  
2 When we started back in May of 2016, Peaje's  
3 collateral consisted of two buckets. The first  
4 bucket consisted of cash equal to about 10 percent  
5 of the principal and interest outstanding on the  
6 bonds, on deposit with the fiscal agent. The second  
7 bucket is the future Toll Revenues.

8 Now here we are in January, the second  
9 payment; I understand first payment in July, second  
10 payment now has been made from the cash. The cash  
11 is gone or almost gone. That money is gone. So all  
12 we have to look forward to now is the future  
13 payments, the future Toll Revenues, which we don't  
14 know that much about. We don't know how much they  
15 are, what they're actually going to be. We think  
16 they're going to be insufficient to both cover the  
17 future payment obligations and to make up for what  
18 has been taken. But the harm is --

19 THE COURT: Staying right with that,  
20 why is that the standard? I read your briefs below  
21 and on here you consistently say that the future  
22 revenue stream won't be enough to cover all of the  
23 obligations, not just the debt obligation but also  
24 refunding, in effect, collateral. And as I  
25 understand the adequate protection rule which you'd

1 like us to apply, we don't look at that. We  
2 actually look -- if a creditor is over-secured we  
3 will get whether the collateral will be impaired  
4 down to the point to eliminate what the Court's call  
5 an equity cushion. And I don't see you ever having  
6 argued that either below or even in any brief to us  
7 on appeal.

8 MR. BRUNSTAD: Yes, your Honor. But  
9 the critical point there is that it's a question of  
10 fact. It depends on the value of the future  
11 revenues. They --

12 THE COURT: Can you point to anything  
13 in your filings with the District Court where you  
14 proposed, where you even alleged that the diminution  
15 in the value of the collateral would be enough to  
16 take you down below -- in other words, not just  
17 impaired the collateral, but reduce it so much that  
18 it would impair the debt?

19 MR. BRUNSTAD: Well, we argued over  
20 and over again that that was what was going to  
21 happen.

22 THE COURT: I didn't see it. Can you  
23 point me towards where you --

24 MR. BRUNSTAD: On the (inaudible),  
25 your Honor, I will give you the page cites to our

1 brief. I don't have it right in front of me, but I

2 will do that.

3 But the point is that it is a question

4 of fact, and we never had a hearing. And I also

5 want to point out, it is the debtor here, the

6 Commonwealth's burden to show that there is no harm

7 to us. It's not our burden to show that when they

8 take our collateral and spend it, that we will be

9 harmed. It is their burden to show that it won't

10 be. When they take your cash, when they take your

11 property, and they dissipate it or they spend it, it

12 is their burden to show that we're being adequately

13 protected nonetheless. And the adequate protection

14 standard is very simple. It comes from Morales and

15 it's that they must basically show there's a

16 reasonable assurance of a suitable replacement.

17 They have to show that the cash today

18 is being replaced by something, and they have to

19 show first when they're going to stop taking our

20 collateral, because if they keep taking our

21 collateral infinitely into the future we'll never be

22 paid, we're obviously harmed, and --

23 THE COURT: Back to the burden

24 question that you just touched on and explain to me

25 the basis for your assertion that the burden would

1 be on them given that the statute -- I know we start  
2 out with language that says "For cause shown".

3 MR. BRUNSTAD: Correct, your Honor.

4 THE COURT: That "shown", I think  
5 suggests that the party seeking relief will show  
6 cause, which kind of sounds like you have some  
7 burden here.

8 MR. BRUNSTAD: We do. We have a  
9 burden of showing we have a secured interest. We  
10 have a burden of showing that they are taking our  
11 property and spending it. Those are undisputed  
12 facts. We've established our burden. The burden  
13 that exists for them to show, that their taking of  
14 our property and dissipating it is not causing us  
15 harm.

16 This standard of cause is borrowed  
17 from Section 362 of the Bankruptcy Code. Section  
18 362 says that relief from the automatic stay in  
19 bankruptcy may be granted, including for lack of  
20 adequate protection.

21 Then the concept of the cause is  
22 borrowed there into PROMESA here. We take the  
23 subtle meaning of that concept here. The subtle  
24 meaning includes that they have the burden of  
25 showing that they're taking our property and

1 spending it is not causing us harm. That's what  
2 adequate protection means. The burden of proof is  
3 baked into that very concept.

4         Now there's an important reason why  
5 that must be the standard here. PROMESA itself bars  
6 us from asserting a remedy to stop them from taking  
7 our property. The statute itself prevents us from  
8 asserting a remedy. That in and of itself generates  
9 a conflict with the Constitution, with the Fifth  
10 Amendment, where somebody is continually taking the  
11 property and you can do nothing about it.  
12 Ordinarily we have all kinds of remedies that are  
13 being prescribed by the statute. To avoid a  
14 conflict with the Constitution we must have a  
15 mechanism that allows us to show that they -- we're  
16 entitled to relief from the stay unless they can  
17 show --

18         THE COURT: But see, we have not  
19 confirmed, you just said we must have a mechanism  
20 that allows us to show.

21         MR. BRUNSTAD: Correct.

22         THE COURT: All right. So go back to  
23 the question. How much do you have to show and  
24 when?

25         MR. BRUNSTAD: Yes.



1 THE COURT: And so what do you say to  
2 the point that when you take the word "Shown" and  
3 you add in the policy considerations that we're  
4 talking about, a temporary stay, we're talking about  
5 a desire to reduce suits, why wouldn't it  
6 potentially lead to an argument that before a suit  
7 is going to be allowed a creditor needs to come in  
8 and at least make a prima facie claim that its  
9 actual debt obligation is being impaired by the  
10 reduction of collateral --

11 MR. BRUNSTAD: Yes.

12 THE COURT: -- below -- you have to at  
13 least claim that in your motion.

14 MR. BRUNSTAD: Oh, we did. And in the  
15 end it's the same burden we would have under Section  
16 362. Under Section 362 we must show cause, same  
17 idea, all we have to do is come in and say "We have  
18 a lien, a security interest in this property that's  
19 undisputed." Our collateral is being taken and  
20 spent. That is undisputed. The burden then shifts  
21 to them to demonstrate.

22 THE COURT: But there aren't -- there  
23 are bankruptcy cases, are there not, that say that  
24 even in that situation, the creditor still has the  
25 burden of showing that there is no equity cushion?

1 It's not -- it's not cut and dry; am I right?

2 MR. BRUNSTAD: But actually in this  
3 context it is. First of all, they refuse to tell us  
4 what the future revenues are going to be. We don't  
5 have that information. And if we don't have -- if  
6 we -- if we -- the cash was supposed to accumulate.  
7 The cash, as we understand it, is now gone. There  
8 will be no money there to make the July payment  
9 coming up in 2017, unless they turn those revenues  
10 back on. It takes time for those revenues to  
11 accumulate.

12 On pages 34 and 35 of our brief, we  
13 trace the history of the adequate protection concept  
14 to the Morales holding case that Congress adopted  
15 when it crafted the adequate protection concept.  
16 And there the Court was very clear the adequate  
17 protection concept clearly encapsulates this idea  
18 that if you take someone's property, a promise of  
19 future payment, which is all that they're offering  
20 here, a promise of future payment from the future  
21 revenues is never adequate protection unless they  
22 can show, and it's their burden, that the future  
23 revenues are so great that it doesn't make a  
24 difference.

25 Picture the apple farm, where the

1 farmer has apples, grows apples and they're there  
2 and the bank has a lien on the apples to secure a  
3 debt. The farmer sells the apples and now has cash.  
4 If the farmer spends the cash what does the creditor  
5 have to look to? Nothing. The prospect of future  
6 apples that may or may not be grown? Or it might be  
7 okay if the farmer can show in bankruptcy "I'm going  
8 to grow all these future apples and they're going to  
9 have such a great value that it doesn't matter that  
10 I just spent all of your cash from this crop, it's  
11 okay to make you wait."

12 But when the farmer spends the cash,  
13 sells the apples and spends the cash, which is what  
14 they have done here, they then have to come forward  
15 and show you that there is a reasonable prospect of  
16 a suitable substitute, a suitable replacement that  
17 will be provided.

18 THE COURT: Let me ask you a question  
19 about that. If Congress thought that -- that  
20 the -- sort of the bankruptcy code way of dealing  
21 with this in terms of adequate security was so  
22 utterly critical when we're dealing with a sovereign  
23 or somebody with the ability to tax or otherwise  
24 raise revenue through fees, tolls, et cetera, why do  
25 you suppose they didn't put that language in?

1 MR. BRUNSTAD: Two reasons. One is --

2 THE COURT: What I'm really asking is

3 how much flexibility do we have?

4 MR. BRUNSTAD: Yes. I would suggest

5 even though they said cause and didn't specify it,

6 the flexibility I think has to be cabined within the

7 adequate protection concept. And here's why:

8 The adequate protection concept is

9 itself based on the Fifth Amendment. The adequate

10 protection concept recognizes that when a debtor

11 files for bankruptcy the automatic stay kicks in and

12 prevents the secured creditor from exercising its

13 rights when its collateral is being dissipated. And

14 Congress rightfully chose that -- this came from a

15 case law before Congress did this in 1978, that

16 where the collateral is being taken or dissipated or

17 is depreciating in value in bankruptcy, the secured

18 creditor has a constitutional right to protection,

19 otherwise the automatic stay itself affects the

20 taking.

21 THE COURT: But if -- but if your --

22 if the Fifth Amendment argument hinges on the way

23 the reserve account is set up, the way the

24 expenditures are made, isn't that essentially a

25 contract claim as opposed to a property claim?

1 MR. BRUNSTAD: No. Security

2 Industrial Bank, the Supreme Court decision, it's  
3 cited on page 1 of our reply brief citing the  
4 Radford (ph) case, another other Supreme Court case,  
5 illustrate that a lien in collateral is a property  
6 right, not a contract right, it's a property right.  
7 A lien is a purchase. Under Article 9 of the  
8 Uniform Commercial Code, a security interest is a  
9 purchase interest in the collateral, it's an  
10 ownership interest --

11 THE COURT: But the payment that  
12 you're talking about is a -- is a twice a year  
13 payment --

14 MR. BRUNSTAD: Correct.

15 THE COURT: -- that is a result of  
16 contract.

17 MR. BRUNSTAD: That's just how the  
18 collateral is to be distributed.

19 THE COURT: Yeah, so I'm talking about  
20 the revenue stream.

21 MR. BRUNSTAD: In bankruptcy, it is  
22 true, if we were in a bankruptcy proceeding, and  
23 we're probably going to get -- go there, there will  
24 be another stay, one more delay, if -- in the  
25 bankruptcy proceeding it is true that debtors have

1 some leeway to alter the terms of payment, but  
2 that's not what we're talking about here. We're  
3 talking about the security of payment, the  
4 collateral itself, the property. And when it is  
5 dissipated, when it is spent, they have to show in  
6 order to be able to spend it, that it's not causing  
7 us any harm. Why? Because we are prohibited from  
8 the platform of the PROMESA of stay from exercising  
9 our rights.

10         So to preserve the Fifth Amendment  
11 concern, and applying the Canon of Constitutional  
12 Avoidance, the Court should interpret the cause  
13 standard under PROMESA to be the same as the cause  
14 standard under Section 362 of the Bankruptcy Code to  
15 avoid that conflict with the Constitution where they  
16 could just continue to take the collateral for as  
17 long as they want and we can do nothing about it.  
18 The standard should be the same. It should also be  
19 the same under the Borrowed Statute Canon, because  
20 the -- the cause standard under the bankruptcy code  
21 was imported here and so, the subtle meaning goes  
22 with it, including the requirement of adequate  
23 protection.

24         Adequate protection requires that they  
25 show that a suitable substitute will be provided for

1 what is being taken. They never showed that below,  
2 we never had a hearing. As the Martin case from the  
3 Eighth Circuit establishes, adequate protection is a  
4 question of fact. You cannot have a court decide  
5 adequate protection without a hearing, an  
6 evidentiary hearing.

7 THE COURT: Thank you.

8 MR. BRUNSTAD: Thank you.

9 MS. SOOKNANAN: Good morning, your  
10 Honors. Sparkle Sooknanan for the Altair  
11 appellants, holders of bonds issued by the Employees  
12 Retirement System. May I reserve two minutes for  
13 rebuttal?

14 THE COURT: Yes.

15 MS. SOOKNANAN: Thank you. Your  
16 Honors, it is undisputed that since July of 2016,  
17 the ERS has received over \$100 million of employer  
18 contributions that it has diverted from Appellants's  
19 collateral accounts. It is also undisputed that  
20 appellants have a lien on that property and all  
21 employer contributions received by the ERS. And in  
22 the absence of adequate protection to protect that  
23 property interest, Appellants are entitled to relief  
24 from the PROMESA state.

25 Appellants are both statutorily and

1 constitutionally entitled to adequate protection.  
2 What the adequate protection requirement does is it  
3 essentially reconciles the competing interests of  
4 debtors and creditors. Debtors get some breathing  
5 room, secured creditors are barred from seizing  
6 their property during the stay, and in exchange the  
7 adequate protection requirement is meant to protect  
8 secured creditors from the loss of value of their  
9 collateral. And what the Commonwealth is advocating  
10 is essentially a one-sided automatic stay where  
11 debtors's interests are protected and secured  
12 creditors's rights are essentially disregarded, and  
13 that is not the statute that Congress enacted.

14 THE COURT: I understand that it's  
15 (indecipherable) that the collateral potentially has  
16 been reduced here, but let me ask you the same  
17 question I was previously asking.

18 Is there a claim here in this case  
19 that the reduction in collateral is enough to push  
20 you to the point where there's no equity cushion, or  
21 even worse, such that the payment of the debt itself  
22 is now in jeopardy? Because as I understand it,  
23 you've I think stipulated that there'll payments  
24 through the current extension of the Moratorium Act  
25 and then inflows thereafter will be roughly 19



1 million a year where the debt obligations are  
2 roughly 14 million a year -- or a month, rather. So  
3 it sounds like in 20 months, you build up 100  
4 million back up.

5           So I'm having trouble seeing where  
6 you've alleged the type of impairment of collateral  
7 that would rise to the level of inadequate  
8 protection.

9           MS. SOOKNANAN: So two responses to  
10 that, your Honor. First, if it is in fact true that  
11 all future employer contributions are going to be  
12 paid, the bonds may well be over-secured. The  
13 problem is here that Appellees themselves have said  
14 very clearly that future employer contributions are  
15 uncertain. And in fact, the only facts in the  
16 record below, on which the District Court made its  
17 decision about the certainty of future employer  
18 contributions, is that they're uncertain.

19           The ERS has said that in plain terms,  
20 the Commonwealth just a couple months ago, in  
21 October when it submitted its fiscal plan to the  
22 Oversight Board said that, that we can't trust in  
23 those future employer contributions. So they cannot  
24 then say we are protected by those very  
25 contributions.

1 And the District Court -- remember, a  
2 district court found that the reason we are  
3 adequately protected is because there is this future  
4 revenue stream. And the only facts in the record  
5 about that revenue stream were facts we put forward,  
6 statements by Appellees themselves that those  
7 payments are not uncertain -- are uncertain. I  
8 apologize. And if those payments are uncertain the  
9 bonds are not over-secured.

10 And the second response to that is, is  
11 the burden of Appellees to show that in fact  
12 they're -- the bonds are over-secured? They have  
13 not, to this point, and perhaps they will clarify if  
14 it is their position that the bonds are over-secured  
15 and if they would like to prove as an evidentiary  
16 matter that that is the case, but they did not meet  
17 that showing below and there's no record on which  
18 this Court to make that showing. And the District  
19 Court didn't find that to be the case.

20 THE COURT: Could you clear up a  
21 little confusion regarding -- as I understand it,  
22 there's 75 million in funds that are in bank X, that  
23 you would be all fine, everything would be okay if  
24 it were moved over to a trust account?

25 MS. SOOKNANAN: Yes, your Honor. So

1 it is our -- so they have diverted -- as of Nov --  
2 as of the time of the hearing, as of November it was  
3 around 75 million. The ERS has said it's receiving  
4 approximately 18.8 million a month and so there's  
5 somewhere more than 100 million now.

6 What they are saying is that they're  
7 diverting our money, but they don't actually need  
8 it. They're not using it. The ERS has represented  
9 to this Court that it's simply sitting in an account  
10 being held and not used.

11 THE COURT: And does your lien not  
12 trade -- follow those funds into that account?

13 MS. SOOKNANAN: Correct, it does not.  
14 And what we've said to them is, "If you're not using  
15 the money, instead of holding the money in an  
16 operation account where you're free to spend it  
17 tomorrow, simply place it in a separate account,  
18 attach a lien, or hold the money for our benefit  
19 until a court decides who has the right to that  
20 money." That's all we have asked for and that would  
21 have ended this litigation. That's what we asked  
22 for in the District Court.

23 THE COURT: And do you agree with --  
24 ERS asserts that its prohibited from making that  
25 transfer by the Moratorium Act, or executive order

1 issue pursuant to the Act, and what they cite in  
2 their brief simply suspends an obligation to make  
3 the transfer, but at least English translation does  
4 not indicate that it prohibits them from making a  
5 transfer.

6 MS. SOOKNANAN: So, even if the -- the  
7 Moratorium Act prohibits them from making that  
8 transfer, that is why we are saying "Even if you're  
9 not transferring it to our collateral accounts, if  
10 you're not using it put it in a separate account,  
11 don't keep it in an operating account where you're  
12 free to spend it. Put it in a separate account and  
13 agree not to touch the money for this stay and when  
14 a court decides whether we have actual access to the  
15 money or not, that's when the money can be moved."

16 So we understand that the -- their  
17 hands might be tied by the Moratorium Act in some  
18 respect, but if they're not using the money and they  
19 have no need for the money they should separate the  
20 money, and that's all we have asked and they have  
21 refused to do so to this point.

22 THE COURT: And so, do you agree that  
23 the Moratorium Act not only suspends an obligation,  
24 but prohibits them from performing that obligation?

25 MS. SOOKNANAN: Your Honor, I would

1 say the Moratorium Act suspends the obligation even  
2 if it -- even if it prohibits them that does not  
3 prevent them from simply separating the money.  
4 Right now the money is sitting in an operating  
5 account and they are representing to this Court  
6 they're not using it, but they're free tomorrow to  
7 spend that money.

8 Our lien does not attach to that  
9 operating account and they have stipulated that they  
10 pay expenses out of that operating account.

11 At the end of the day, Appellants are  
12 entitled to adequate protection, and in this case,  
13 they have not proven that we are adequately  
14 protected by that future lien on employer  
15 contributions. And this is not a case where  
16 Appellants are saying despite -- there's a lot of  
17 rhetoric in the Commonwealth's brief about the  
18 financial woes facing the Commonwealth, and that may  
19 well be true, but this is not a case where the  
20 Commonwealth is saying to this Court that it needs  
21 Appellants's property to keep the lights on. They  
22 are saying to this Court that they are diverting our  
23 property, money that is ours, and it is undisputed  
24 that it is ours, they are diverting that money, just  
25 keeping it in an account for no reason whatsoever

1 and holding that money. We cannot start telling  
2 secured creditors that they will have no access to  
3 their collateral. That it will be diverted by a  
4 debtor with no adequate protection whatsoever, and  
5 in this case, for no reason whatsoever.

6 Secured creditors are constitutionally  
7 entitled to adequate protection.

8 THE COURT: In your case, do you think  
9 it makes any difference -- suppose we agree with you  
10 about the standard --

11 MS. SOOKNANAN: Yes.

12 THE COURT: -- that adequate  
13 protection -- is the Bankruptcy Code adequate  
14 protection and we look to see whether there's an  
15 equity cushion of at least 20 percent or more or  
16 something like that. Does it make any difference in  
17 your case to whom the burden of production and the  
18 burden of persuasion is allocated?

19 MS. SOOKNANAN: Your Honor, in this  
20 case it does, because the appellees below had the  
21 burden of proving that we are adequately protected.  
22 They have not contested that and the District Court  
23 held that to be so. They did not meet that burden  
24 below. They did not even attempt to show that there  
25 was an equity cushion because no hearing was

1 conducted. And for that reason, at a minimum, if it  
2 is their claim today that we are adequately  
3 protected because there is an equity cushion, and  
4 this Court could reman the case so they have the  
5 opportunity to prove that. But on the record that's  
6 before this Court, there is nothing that this Court  
7 can use to decide that there is an equity cushion,  
8 all that's in the record about that future revenue  
9 stream are statements from Appellees themselves that  
10 those payments are uncertain.

11 And on that record, the Court cannot  
12 find and the District Court incorrectly found that  
13 Appellants are adequately protected. Thank you,  
14 your Honors.

15 MS. MURPHY: Good morning, your  
16 Honors, and may it please the Court, Erin Murphy on  
17 behalf of the individual Commonwealth Defendants.

18 Congress enacted Section 405 of  
19 PROMESA for the expressly enumerated purpose of  
20 providing the Commonwealth with immediate but  
21 temporary reprieve from costly creditor lawsuits.  
22 Now withstanding Congress's findings that this  
23 temporary stay is essential to stabilize the region,  
24 Appellants insist that they should be able to  
25 litigate their claims immediately even though they

1 concededly are being paid in full right now, and  
2 concededly will continue to be paid in full  
3 throughout the duration of PROMESA's stay.

4         The District Court's conclusion that  
5 they should have to wait out the remainder of the  
6 brief stay that's left is a classic interlocutory  
7 order over which we believe this Court lacks  
8 jurisdiction, but in the event the Court concludes  
9 otherwise, should affirm the decision below because  
10 the District Court was manifestly correct in  
11 concluding that Appellants failed to demonstrate  
12 anything that differentiates them from all the other  
13 creditors to whom this stay is plainly intended to  
14 apply.

15         THE COURT: Let's assume that that  
16 shows that the debt payments were remaining current  
17 for now, but the Commonwealth took all of the  
18 collateral that would secure future debt payments, a  
19 hundred percent of it, is it your contention that as  
20 the Commonwealth is in the process of doing that,  
21 Congress prohibited the creditor from going to court  
22 to protect itself?

23         MS. MURPHY: Well, the creditor can go  
24 to court and try to demonstrate cause to lift the  
25 stay, and that's going to depend on the particular



1 facts that --

2 THE COURT: Are you saying that  
3 (inaudible) cause, what I just described?

4 MS. MURPHY: I think it depends on  
5 what the collateral is.

6 THE COURT: Assume it's a hundred  
7 percent of the collateral.

8 MS. MURPHY: But if the collateral is  
9 purely cash, at the end of the stay they get to  
10 litigate their claims and seek money damages for the  
11 full amount of what they lost during the stay.

12 THE COURT: Well, if the money is  
13 being given and dispersed to a million people, so  
14 there's no claim, and they have given unsecured  
15 claim for money damages against the Commonwealth,  
16 the whole idea of security seems to me that  
17 (indecipherable) standards of secured credit rather  
18 than unsecured.

19 MS. MURPHY: Sure. And these  
20 creditors will be secured creditors. They are right  
21 now and they'll be secured creditors when the stay  
22 lifts.

23 THE COURT: Not in the hypothetical  
24 I've asked you to address, which as I've proposed in  
25 the hypothetical that all of the collateral is

1 taken.

2 MS. MURPHY: Right. And in that  
3 circumstance, you'd be a secured credit -- secured  
4 creditor whose security is gone, but you'd have a  
5 claim to litigate against the Commonwealth saying  
6 "You dissipated my security and therefore you owe me  
7 money damages for the full value of my claim."  
8 That's what differentiates what's going on here from  
9 a bankruptcy case.

10 THE COURT: So I think what you're  
11 saying is tomorrow the Commonwealth could go out and  
12 take all of the collateral, essentially, of all of  
13 the creditors in Puerto Rico and there's nothing  
14 that the creditors can do about it until after the  
15 fact bring damage claims that themselves would be  
16 unsecured. That's what I'm hearing you saying.

17 MS. MURPHY: What I'm saying is that a  
18 creditor would need to come in and make a showing  
19 about not just that their collateral is being taken  
20 right now, but that they won't be able to recover  
21 their collateral once the stay lifts. And that's  
22 what these creditors can't show.

23 THE COURT: True. In the hypothetical  
24 it's being dispersed to the general population.

25 MS. MURPHY: And if they could

1 demonstrate that not only is all of their collateral  
2 being dissipated, but there will be nothing left at  
3 the end of the day, there will be no ability for  
4 them to get money damages to get back the money they  
5 have lost, that might be an instance where you could  
6 demonstrate cause to lift the stay.

7 But that's not what we have here.  
8 What we have here is a creditor who's being paid  
9 right now, and who hasn't demonstrated that they  
10 won't be paid once this stay lifts or that even if  
11 they weren't paid at some point, they wouldn't have  
12 all the remedies that both PROMESA and Act 21, the  
13 Moratorium Act, contemplate. Because both of those  
14 statutes fully preserve their secured interests and  
15 their ability to litigate those secured interests  
16 once the stay lifts.

17 THE COURT: Are you aware of any  
18 bankruptcy case that holds that the elimination of  
19 collateral is not something that is cause for relief  
20 merely because you would have an unsecured damage  
21 claim in which you might or might not recover your  
22 money?

23 MS. MURPHY: In bankruptcy context,  
24 we're operating under a rule that we don't think is  
25 the right rule here. In the bankruptcy context,

1 there is an adequate protection standard written  
2 into 362. There's also a burden shifting  
3 (indecipherable) written into 362 that says it's the  
4 debtor's burden to demonstrate adequate protection.  
5 Both of those provisions were conspicuously excluded  
6 from Section 405 for PROMESA.

7           It does not include an adequate  
8 protection standard and it does not -- you know,  
9 they have repeatedly said that it's our burden.  
10 Under 362 it's the debtor's burden, but that's  
11 because the statute expressly says that it's the  
12 debtor's burden to demonstrate adequate protection.

13           That is another provision that  
14 Congress did not import into Section 405. And we  
15 would submit the reason Congress didn't import a  
16 burden shifting regime for proving adequate  
17 protection is because Congress also did not import  
18 an adequate protection standard into Section 405 of  
19 PROMESA. It didn't intend that standard to apply  
20 and that's because you don't need an adequate  
21 protection standard in this context because PROMESA  
22 is quite different from the bankruptcy stay.

23           A bankruptcy stay operates for the  
24 duration of the entire bankruptcy. So in effect  
25 what it says is you're never going to get to

1 effectively foreclose on your collateral, that's  
2 what's usually going on in an inadequate protection  
3 case, they want to foreclose on the collateral. And  
4 the automatic stay in bankruptcy says you don't get  
5 to do that period, we're letting the debtor keep  
6 your collateral for the duration of the stay. That,  
7 as courts have recognized, raises some distinct  
8 Fifth Amendment concerns that have led to an  
9 adequate protection standard that Congress put into  
10 that provision.

11       Here, that's not what's going on.  
12 PROMESA doesn't say that the debt that -- for one  
13 thing, there is no debtor right now. There is no  
14 Title III bankruptcy proceeding here. The  
15 Commonwealth is not a debtor. All that's going on  
16 is there's essentially a stay put in place for  
17 everyone to figure out whether we're going to  
18 proceed to a Title III bankruptcy proceeding,  
19 whether we're going to have voluntary restructuring,  
20 whether some of these obligations may continue to  
21 remain in force in the same shape that they are  
22 right now.

23       So this is very different from  
24 anything you have in the bankruptcy context and it's  
25 also temporary, it ends February 15th or at the very

1 latest May 1st. And at that point, either the  
2 Appellants here will be able to litigate their  
3 claims in full and seek money damages for whatever  
4 injuries they believe they have suffered, or we will  
5 be in a Title III proceeding at which point the 362  
6 stay will kick in. Because in Title III, unlike in  
7 Section 405 of PROMESA, Congress actually imported  
8 362 in its entirety.

9           So if we get into a Title III  
10 bankruptcy proceeding, they'll have a different set  
11 of arguments that they can make, they'll be able to  
12 say that they're entitled to adequate protection and  
13 that we need to make a showing about what is --

14           THE COURT: That's closing -- that's  
15 closing the barn door, right? A little too late  
16 here if in seven months all of the collateral has  
17 been taken. I keep going back to it and (inaudible)  
18 the burden, because I don't think the burden is  
19 constitutionally imposed, so we have a statutory  
20 instruction.

21           But I'm just having great difficulty  
22 with your argument that there's this seven-month  
23 window where the government can entirely, entirely  
24 destroy the value of collateral a hundred percent  
25 and yet that wouldn't in and of itself be good

1 cause.

2 Now, I'm not saying they're entirely  
3 destroying it here. There may be in the future  
4 income streams as the court found enough, but you're  
5 asking us to take pretty broad proposition that  
6 seems to run into a real takings problem.

7 MS. MURPHY: Well, your Honor does not  
8 have to resolve the hypothetical that you suggested  
9 in order to resolve this case, because as you've  
10 recognized, that's not the claim here.

11 THE COURT: Right, if you reject that  
12 hypothetical then it turns the argument back to  
13 whether there is adequate protection here or perhaps  
14 whether the burden of raising a question of adequate  
15 protection was or was not met in the allegations  
16 made, which is a different conversation than you've  
17 been urging us to have so far.

18 MS. MURPHY: Sure. And we do think  
19 that the right way for the Court to look at this is  
20 not -- and I don't think it would be consistent with  
21 what Connis (ph) was trying to do in PROMESA to say  
22 that the Commonwealth has to go through elaborate  
23 hearings where it demonstrates exactly, you know,  
24 for every dollar that we're spending to try to  
25 ensure that residents are receiving essential

1 services, which Congress put express findings into  
2 this statute that part of the point of the stay was  
3 to give the Commonwealth the resources it needed to  
4 ensure that its residents will receive essential  
5 services. So the idea that, you know, for every  
6 dollar diverted the Commonwealth has to demonstrate  
7 that it's also setting aside the exact equivalent  
8 dollar to ensure --

9 THE COURT: That's not the adequate  
10 protection test. You just have to show -- someone  
11 has to address the issue of whether there's an  
12 equity cushion or not. And if they're over-secured,  
13 then they're over-secured and go at it.

14 MS. MURPHY: Absolutely, your Honor,  
15 which is why we don't believe that they could  
16 satisfy adequate protection even if that were the  
17 correct standard here. But, we do believe that the  
18 right standard for the Court to apply is a more  
19 traditional equitable balancing of the equities in  
20 the case, looking at not just whether they're  
21 suffering some sort of harm as a result of the  
22 Commonwealth's actions, but whether they are  
23 suffering irreparable harm that cannot be remedied  
24 at the end of the stay.

25 And I think that has to be the right



1 standard, because we're talking about a statute that  
2 was enacted on the express premise that the  
3 Commonwealth was using pledged revenues to pay for  
4 essential services. And the executive orders they  
5 want to challenge, the first one, Executive Order  
6 18, allowing the diversion of Toll Revenues, that  
7 was promulgated more than a month before PROMESA was  
8 enacted.

9           And there were -- it's also implicit  
10 and explicit in PROMESA that there would be  
11 creditors who wouldn't be paid during the duration  
12 of this stay.

13           So Congress enacted this statute,  
14 understanding that there were creditors as to who  
15 the Commonwealth and its instrumentalities wouldn't  
16 live up to a hundred percent of the bargain that  
17 they had made during this stay.

18           THE COURT: Wait. How do you suggest  
19 we deal with Section 405(k)?

20           MS. MURPHY: I think section 405(k) as  
21 a form of -- an additional form of protection for  
22 Appellants's interests.

23           THE COURT: But doesn't it suggest  
24 that we should not interpret PROMESA in a way as to  
25 destroy security interests since Congress said

1 PROMESA wasn't to destroy security interests?

2 MS. MURPHY: No, I think that what  
3 405(k) is saying is notwithstanding the fact that  
4 the Commonwealth didn't have to live up to its  
5 obligations during the stay, that doesn't mean that  
6 you don't have all your rights the moment the stay  
7 lifts. So it's a form of protection saying, you  
8 know, unlike in a bankruptcy proceeding, we're not  
9 actually allowing the Commonwealth to discharge or  
10 alter your means, your secured interests, your  
11 contractual rights. All of those are fully intact  
12 and the moment the stay expires you can go to court  
13 and allege and try to prove that, you know, that  
14 these actions that were taken were inconsistent,  
15 that they caused you harm, that you're entitled to  
16 damages. So I actually think that 405(k) is further  
17 proof that Congress intended to allow the  
18 Commonwealth to do the things that it knew the  
19 Commonwealth was doing when it enacted this statute,  
20 and instead of creating a broad outlet to basically  
21 let every creditor out from under the stay, Congress  
22 said what we're going to do is ensure that your  
23 rights are fully protected once the stay lifts. And  
24 the "For clause" standard is really intended to be a  
25 safety valve to deal with the extraordinary

1 creditor, not the creditor who's just making  
2 basically the same argument that any creditor, at  
3 least any secured creditor could make, which is, you  
4 know, "I don't think the Commonwealth is living up  
5 to a hundred percent of --"

6 THE COURT: Tell me what -- what an  
7 extraordinary creditor would be, in your mind.

8 MS. MURPHY: I think an extraordinary  
9 creditor, you know, one, you might have a creditor  
10 who has a form of collateral that actually cannot be  
11 remedied if it's lost during the -- it's something  
12 other than money. Money can always be remedied with  
13 money. If they had a particular form of collateral,  
14 that was being, you know, diminished and could not  
15 be made up for after the stay was lifted.

16 You might also perhaps have a creditor  
17 who has unique circumstances of their own that make  
18 it irreparable damage if they aren't getting paid  
19 now. Now of course, I do think that you at least  
20 have to be a creditor who's not getting paid, which  
21 these creditors aren't. These creditors are being  
22 paid in full and conceivably will be paid in full.

23 So, in -- in our mind, you know, that  
24 makes them basically the very last creditors that  
25 Congress would have wanted to be able to lift the

1 stay and engage in litigation about whether they  
2 should be entitled to effectively two lines of  
3 security for their interest instead of just one.

4 THE COURT: When you say that the  
5 statute should -- or contemplates sort of a  
6 traditional balancing of the equities, so shouldn't  
7 there be a hearing?

8 MS. MURPHY: I think that the -- the  
9 way that this case ended up getting to the Court  
10 -- I mean, there were stipulated facts that  
11 basically stipulated to all of the facts that were  
12 relevant to the analysis here, because they  
13 stipulated that they've been paid, they will be paid  
14 throughout the stay and there was stipulations about  
15 what the revenue streams -- I mean, in the Altair  
16 case there's specifically the stipulations Judge  
17 Kayatta referenced about exactly what the levels of  
18 the revenue streams are. So everything was there  
19 that the Court needed.

20 And in the Peaje case, there had just  
21 been a hearing from which hundreds of pages of  
22 testimony were designated on the specific question  
23 of whether the HTA revenues were going to be  
24 sufficient in the future. And one of the claimants  
25 there was an insurer saying "We think we're going to

1 have to cover claims in the future because we think  
2 these revenues will run out."

3           So, you know, it's not as if the  
4 District Court made a decision here without facts.  
5 And in that particular context, I think really it  
6 was incumbent on these parties if they thought  
7 given -- you know, given the record that they put  
8 before the Court of stipulated facts, of testimony,  
9 of the information that the Court recently could  
10 have viewed as sufficient for it to make its ruling,  
11 I do think it was incumbent on them to say "Hey,  
12 hold on, you know, you need to reconsider this  
13 ruling because we think we had something additional  
14 beyond what we already put before you that you  
15 didn't realize would have been relevant." And  
16 neither of the appellants here did that.

17           THE COURT: What is the result of this  
18 ongoing litigation had on the whole notion of  
19 breathing room?

20           MS. MURPHY: Well, there is a lot of  
21 testimony that the Commonwealth put on about that in  
22 the Brigade hearing, and some of that was designated  
23 in the Peaje proceedings, regarding about how, you  
24 know, it has caused the Commonwealth to have to  
25 divert resources. And having a hearing not only

1 requires someone to come testify, it requires  
2 pulling people away from what they should be doing  
3 under PROMESA, which is, you know, getting the  
4 Commonwealth back in fiscal order to prepare for the  
5 hearing, to help prepare and review all papers that  
6 are being filed in all of this litigation.

7           So it really has been a tremendous  
8 distraction to the Commonwealth, which is exactly  
9 the opposite of what Congress intended when it said  
10 "We're going to give you this stay precisely because  
11 we don't want you to be spending your time in costly  
12 creditor litigation when it would be better to put  
13 that time to the use of -- and seeing to the needs  
14 of the people of Puerto Rico and getting Puerto Rico  
15 back into fiscal order."

16           THE COURT: And just one more  
17 question.

18           Regardless of who has the burden, if  
19 we're honing in on the notion of equitable cushion,  
20 what specifically in the evidence demonstrates that  
21 there's an equitable cushion, the record stipulated  
22 record evidence?

23           MS. MURPHY: Sure. I think it's --  
24 it's -- I mean, the stipulated evidence in Altair  
25 demonstrates that even without the contributions

1 from the Commonwealth employees, which are only  
2 suspended temporarily pursuant to these executive  
3 orders, even the non-Commonwealth contributions are  
4 higher than the stipulated amounts necessary to  
5 service the debt.

6         And as to the HTA Peaje party, you  
7 know, I don't understand them to ever have even  
8 suggested that they think the HTA revenues are going  
9 to be so low that they can't be paid, particularly  
10 given that Peaje is actually -- they're kind of the  
11 first priority set of creditors under the HTA,  
12 because they're the earliest set of bonds. So  
13 basically you'd have to have like no HTA revenues  
14 coming in for them to have any real risk of not  
15 getting paid. And that's why, as I understand it,  
16 really their complaint has only been they don't  
17 think there will be sufficient revenue to not only  
18 pay them, but reinstate the reserve accounts and we  
19 don't think that's the right standard even -- you  
20 know, we don't think they're entitled to an equity  
21 cushion that would not only ensure that they're  
22 being paid, but also kind of ensure that they have a  
23 secondary line of, you know, kind of security for  
24 getting paid in the future. If there are no further  
25 questions, thank you.

1 MR. CHESLEY: May it please the Court,  
2 Richard Chesley on behalf of ERS, the Employee  
3 Retirement System of the Commonwealth of Puerto  
4 Rico.

5 I appreciate the Court's time here  
6 this morning and I will be brief as Counsel for the  
7 Commonwealth has covered many of the topics we  
8 wanted to raise. But with respect to the issues  
9 before this Court and regardless of how the Court  
10 resolves certain of the legal challenges, the  
11 Appellants's appeal with respect to ERS founders on  
12 one crucial set of facts to which they stipulated  
13 below, and which the District Court relied upon in  
14 its holding. That there are sufficient monies in  
15 the debt service and reserve accounts to service the  
16 bold holder debt until April 1st of 2017, after the  
17 PROMESA stay expires. And not a single principal  
18 and interest payment will be missed while the  
19 PROMESA stay remains in place and therefore, the  
20 Appellants face no financial harm as a result of the  
21 stay.

22 Moreover, based upon the liens that  
23 are held in the pledged property, and we'll talk  
24 about that in a moment, the bondholders are secured  
25 not only until the conclusion of the PROMESA stay,



1 but for many, many years to come based upon the  
2 stipulated record that was before the District  
3 Court.

4 And again, while Counsel for the  
5 Commonwealth has adequately covered many of the  
6 issues we want to touch, I do want to raise a couple  
7 of points that I think are extremely relevant for  
8 this panel's consideration.

9 First of all, the Appellants take the  
10 position that the standards for relief from the  
11 automatic stay under Article IV of PROMESA, I'm only  
12 talking about Article IV of PROMESA, should simply  
13 mirror those under Section 362 of the bankruptcy  
14 code. Namely the cause for relief from the  
15 automatic stay should include, but not be limited  
16 to, which the bankruptcy code provides, adequate  
17 protection. They advanced the position despite the  
18 fact these two statutory schemes have different  
19 language and were intended for very different  
20 purposes.

21 So then what did Congress intend? And  
22 I think the Congressional history underlying Article  
23 IV of PROMESA is very critical to see what did  
24 Congress intend. Well, the house report on Section  
25 405, which is cited in our brief, states under the

1 Section 405 automatic stay appoint enactment, "If a  
2 party is determined to be subject to irreparable  
3 damage because of the imposition of the stay the  
4 district court is authorized to grant relief from  
5 the stay to such party."

6 Of course, if Congress wanted to  
7 impute the adequate protection standards under  
8 Section 362 and Section 361 into Article IV it  
9 certainly could have and it absolutely did that with  
10 respect to Article III of PROMESA. But we're not in  
11 the realm of Article III, we're simply during this  
12 limited phase of the infirm relief.

13 THE COURT: And then how do you  
14 address the argument that as a constitutional  
15 matter, taking so much of the collateral as to  
16 impair the ability to pay the debt is itself  
17 irreparable harm because it's a taking?

18 MR. CHESLEY: And this goes to the  
19 factual issues that were before the District Court  
20 on the ERS appeal.

21 THE COURT: Well, no, putting aside  
22 the facts, you are suggesting the use of the  
23 irreparable harm standard rather than an inadequate  
24 protection standard.

25 MR. CHESLEY: Yes, your Honor.

1 THE COURT: And I'm having trouble  
2 seeing what the difficulty is if we had a true  
3 scenario assuming the facts did show blatant lack of  
4 adequate protection, wouldn't that be irreparable  
5 harm?

6 MR. CHESLEY: Well, fortunately in our  
7 case that's not the factual record, but to the  
8 extent -- you Honor, I do agree to the extent we had  
9 a situation where there was a blatant taking of all  
10 of the property, then I think there would be a  
11 compelling argument that that is irreparable harm.

12 THE COURT: And then could you also  
13 address the issue I had asked Counsel about earlier,  
14 why -- what is it that actually prohibits ERS from  
15 making the payments? I understand there's  
16 legislation that has suspended your obligation to do  
17 so.

18 MR. CHESLEY: The Moratorium Act  
19 prohibits the transfer of that --

20 THE COURT: And what is it in -- can  
21 you refer to us any language in that --

22 MR. CHESLEY: With respect to the  
23 Moratorium Act, your Honor, I can reference that to  
24 the Court, but it limits the ability -- limits the  
25 inflow of contributions from the Commonwealth to

1 ERS, not the non-Commonwealth employees, and it  
2 limits our -- precludes our ability to then transfer  
3 amounts that we are holding to the bondholder.

4 THE COURT: Okay. The cites in the  
5 briefs didn't seem to help on finding language that  
6 did that.

7 MR. CHESLEY: We apologize for that,  
8 your Honor. We can file a supplement to the extent  
9 that is necessary.

10 But I do want to touch in my last  
11 minutes on the facts. Yes, your Honor?

12 THE COURT: Please file that.

13 MR. CHESLEY: We will, your Honor.  
14 And if I can, I do want to touch on the facts of our  
15 case. Specifically since July of 2016, at the  
16 beginning of the PROMESA stay, the ERS -- ERS has  
17 been holding over 75 -- currently holding over 75  
18 million in the operating account based upon  
19 contributions from the non-Commonwealth employers.

20 Counsel for the Appellants made  
21 mention of the fact that there's all these  
22 representations or statements as to the uncertainty  
23 with respect to future contributions. There is no  
24 uncertainty with respect to the non-Commonwealth  
25 contributions which amount to approximately

1 \$20 million per month. In fact, during 2015, again,  
2 this is in the record, ERS received about  
3 \$224 million. It solely in non- -- non-Commonwealth  
4 employer contributions. This is in the face of a  
5 debt service obligation of \$166 million.

6 This undisputed evidence was presented  
7 before the District Court, that in fact the equity  
8 cushion exists. And with respect to that  
9 \$20 million, it continues to flow in and the  
10 Appellants do have the lien. If you look at the  
11 pledged property definition that's included in the  
12 stipulated facts, they have a lien in that  
13 collateral, they have a lien in the reserve account  
14 collateral which will pay them, and they have a lien  
15 in the future revenue.

16 And the last thing that I think is  
17 critical is what the judge did with respect to -- if  
18 I may finish, your Honor.

19 THE COURT: Yes.

20 MR. CHESLEY: What the judge did, the  
21 District Court with respect to the balancing of the  
22 equities, and he made particular mention of the fact  
23 that once the stay is alleviated the future revenue  
24 stream, which is an additional \$250 million,  
25 approximately, per year in Commonwealth employer

1 contributions, will then be made available back to  
2 ERS. This, in combination with more than adequate  
3 amounts to pay the debt service based upon the  
4 non-Commonwealth gave the District Court more than  
5 adequate factual support to grant the relief that he  
6 did. Thank you, your Honor.

7 MR. LUSKIN: May it please the Court,  
8 Michael Luskin for the Financial Oversight and  
9 Management Board of Puerto Rico, the Appellant in  
10 seven appeals involving the intervention motions and  
11 the amicus in the two lift-stay appeals that we've  
12 been hearing about this morning.

13 THE COURT: Mr. Luskin, are there any  
14 pending cases in the District Court in which you're  
15 waiting to hear about your intervention status?

16 MR. LUSKIN: Yes.

17 THE COURT: Okay.

18 MR. LUSKIN: One called Lex (ph)  
19 claims, which is mentioned in our opening brief or  
20 amicus -- or opening appeal brief.

21 I know time is limited, but I am going  
22 to spend a moment on the seven appeals that are  
23 consolidated here. We believe that the District  
24 Court improperly applied a narrow and mechanical  
25 test of Rule 24, governing intervention, the result

1 of course was to deny us participation in the seven  
2 cases and the order should be reversed. The  
3 District Court found what it referred to as a  
4 procedural deficiency, but there was none, the Court  
5 apparently believed that what the board was required  
6 to do was to file one of the pleadings of the kind  
7 listed in Rule 7, answer and answer with  
8 counterclaims and so on, but that's wrong.

9         What the rule requires is a pleading  
10 that sets out the claim or defense for which  
11 intervention is sought and that is precisely what we  
12 did.

13         We believe the District Court should  
14 have taken note of the -- and taken into account the  
15 specific procedural postures of the cases. In the  
16 three consolidated Peaje cases there were no  
17 complaints on file. Two of the three parties had  
18 included proposed complaints with their motion  
19 papers and one of them, Altair, did not include a  
20 proposed or draft complaint. So, there was nothing  
21 to respond to in the traditional Rule 7 sense.

22         THE COURT: In some of the cases where  
23 there was a complaint filed --

24         MR. LUSKIN: Yes, the Brigade cases.

25         THE COURT: -- why didn't the Board

1 just file, I mean it could have been a one-page  
2 answer, right, because an answer -- you only need to  
3 respond to allegations against you. There were  
4 none.

5 MR. LUSKIN: Well, I think that -- you  
6 know, we did struggle with that, your Honor, to tell  
7 you the truth. We did feel that, frankly,  
8 responsibly to reply to those, to answer those  
9 allegations we would have had to take a position on  
10 the merits on the preemption, the taking and the  
11 other constitutional claims.

12 THE COURT: Why is that? Under Rule  
13 (indecipherable) you don't have to respond to  
14 allegations that aren't against you, right?

15 MR. LUSKIN: Well, I can -- you're  
16 correct and I will --

17 THE COURT: But that was your  
18 thinking, you thought you might be taking a risk of  
19 having to respond?

20 MR. LUSKIN: Well, we were -- yes, we  
21 did not want to take a position, frankly, on any  
22 aspect of these constitutional claims, and that  
23 relates to the stay issue as well. Having the  
24 Oversight Board take a position on the merits, or  
25 refusing to take a position on the merits, has an



1 impact on our ability to negotiate. Our goal as we  
2 see, our statutory rule is to operate in a level  
3 playing field, frankly, a quiet playing field.  
4 That's what the stay is about, and that's what we  
5 said in our intervention papers, and that's what we  
6 explained to Judge Besosa as to why in our -- in our  
7 motion for reconsideration, why we didn't take  
8 positions on the merits. We still have not taken  
9 positions on the merits and we believe that during  
10 this quiet period before Title VI or Title III  
11 proceedings are filed we should not.

12 Our goal is to deal with those claims  
13 in the conference room, not the courtroom, and see  
14 if we can negotiate restructuring agreements or  
15 consensual fiscal plans.

16 What we did do, in all seven cases,  
17 Judge Kayatta, is -- is to address the sole live  
18 issue that was then before the Court, which were the  
19 pending motions to lift the stay. And there can be  
20 no doubt about what our position was, and that is  
21 after all the goal of Rule 24.

22 We think the District Court should  
23 have addressed our motions on the merits, not  
24 relying on the procedural efficiency, to use his  
25 words. And had he done so he would have referred to

1 Section 212(a) of PROMESA which allows us to  
2 intervene in any action against the Commonwealth.  
3 He could have done so under Rule 24a-2, which allows  
4 us to intervene as of right based on our interest,  
5 our unique position, the adequacy of representation  
6 sensation and so on. And we would then have  
7 participated in the case below.

8 We think that the -- this Court's  
9 prior decisions support the Oversight Board's view  
10 on these motions. The one case cited in the Court  
11 below was a case where there was no -- no proposed  
12 pleading at all submitted and we would agree,  
13 if -- if the punitive intervenor doesn't bother to  
14 put in a proposed pleading of any kind then I could  
15 see denying the motion. But even there in the  
16 Court's decision in Liggett (ph), there was no  
17 intervention motion, but intervention was allowed,  
18 particular facts but the right decision clearly. So  
19 those seven orders should be reversed.

20 Unless the Court has questions on  
21 intervention I'd like to turn to the merits. The  
22 amicus position on the lift-stay motions. And we  
23 have suggested, the Oversight Board has suggested a  
24 standard that is somewhat different than the other  
25 parties, we do not believe that the sole touchstone

1 should be adequate protection, though I will say,  
2 Judge Kayatta, that your hypothetical would, I  
3 believe, present a situation where adequate  
4 protection might trump everything else. But this is  
5 nowhere close to a case where a hundred percent of  
6 anyone's collateral is being taken and destroyed.

7         We also don't believe that irreparable  
8 injury alone is the sole touchstone. And others  
9 have pointed out that Bankruptcy Code 362 includes  
10 adequate protection as reason, as cause for lifting  
11 the stay. Certainly Congress knew what it was doing  
12 when it drafted 405E, it did not copy that language  
13 notwithstanding the fact that it -- it copied or  
14 incorporated verbatim 98 other provisions of the  
15 bankruptcy code in Section 301 of PROMESA. When it  
16 wanted to copy it knew how to copy. And it did not  
17 do so here and I think that for purposes of  
18 statutory construction that ought to be enough.

19         So why should the PROMESA standard be  
20 a different standard? And my answer is that PROMESA  
21 establishes a very different regime than the  
22 bankruptcy code. PROMESA establishes what I refer  
23 to as a quiet time, the breathing room, which is  
24 actually part of the findings in the statute itself,  
25 and purposes in the statute itself. It establishes

1 breathing room, a quiet time for the Oversight Board  
2 to do the very tasks that its mandated to do by the  
3 statute, which is to organize, to collect  
4 information, to designate covered instrumentalities  
5 to develop projections to review budgets. To  
6 develop fiscal plans and to negotiate out-of-court  
7 restructuring agreements, and to assess the  
8 advisability of going the out-of-court route or the  
9 consensual route of Title 6 of PROMESA or the  
10 nonconsensual or only partially consensual route of  
11 Title III bankruptcy. And it's supposed to do -- we  
12 are charged with doing all of that during the quiet  
13 period.

14           Only after we decide which way to go  
15 do we commence a bankruptcy proceeding if that's the  
16 decision, to go into chapter -- a Title III and in  
17 Title III-362 of the bankruptcy code along with 97  
18 other provisions, expressly govern verbatim. But  
19 that's not where we are, we're in Title IV in the  
20 quiet period. And it is very important.

21           Forcing decisions on constitutional  
22 issues to go to the intervention point would impede  
23 negotiations, if not render them outright  
24 impossible.

25           THE COURT: In Congress --

1 MR. LUSKIN: Yes?

2 THE COURT: And I realize it was quite  
3 a concession because you used the word "Might", but  
4 you're attempting that a complete elimination of the  
5 collateral might be enough to overweigh everything  
6 else. Stay with that for a second --

7 MR. LUSKIN: Yes.

8 THE COURT: -- and not treat it as a  
9 concession, but treat it as a talking point. Why  
10 wouldn't Congress have wanted to say "Well, that's  
11 enough, but if you just take half the collateral,  
12 well below the equity position, that's not enough"?  
13 It's -- it's a -- it's a taking just as much.

14 MR. LUSKIN: Well, but for adequate  
15 protection and constitutional purposes, the only  
16 taking that matters is a taking that threatens the  
17 secured creditors's interest in the debtor's  
18 interest in the collateral.

19 THE COURT: Yeah, so assume that's the  
20 rule.

21 MR. LUSKIN: So if that's --

22 THE COURT: In any equity position  
23 debtor is out of luck -- creditor is out of luck,  
24 okay.

25 MR. LUSKIN: Right.

1 THE COURT: But I'm talking about a  
2 scenario where you go well below the equity --

3 MR. LUSKIN: Right. And I -- and I  
4 believe that in a situation where the facts show  
5 that a secured creditor at the outset of a case is  
6 clearly and unequivocally moving from over-secured  
7 to under-secured, in a way that damages and  
8 threatens its ability to be repaid, is a  
9 consideration.

10 However -- and the Supreme Court in  
11 Timbers points this out, that -- that duration of  
12 the stay is important. The Morales case, the  
13 Timbers case really don't help the Appellants here.  
14 That case involved a ten-year note after a plan of  
15 reorganization that stripped away the basket of  
16 rights that the secured creditor had --

17 THE COURT: The duration is important  
18 only if there's not enough time to do the taking.  
19 But if there's enough time to take it all then it's  
20 gone.

21 MR. LUSKIN: I -- following through  
22 that hypothetical, but I must echo what my brethren  
23 have stated up here, which is that we are so far  
24 away from that kind of situation. The record  
25 establishes over-security here. There is cash and

1 cash flow that is more than sufficient to pay the  
2 debt service, and certainly during the duration of  
3 the stay, from day one of the stay through the end  
4 of the day next month, or whenever it ultimately  
5 ends.

6 THE COURT: So I think I hear you  
7 saying, which makes sense, that it's not just the  
8 duration, but it's the duration in relationship to  
9 the berm rate here, and if the berm rate  
10 (indecipherable) the duration does not create enough  
11 to impair the collateral so that it threatens the  
12 payment of the debt then --

13 MR. LUSKIN: Correct.

14 THE COURT: -- (inaudible) would have  
15 an issue.

16 MR. LUSKIN: Your Honor, yes, that is  
17 correct and that is what distinguishes this case.  
18 Where we have a perpetual income stream from  
19 virtually all, if not all of the cash collateral  
20 cases or adequate protection cases that the  
21 Appellants cite, many of those cases were real  
22 estate cases or equipment cases where the cash  
23 collateral, the future rent that was being offered  
24 as adequate protection was rent under a lease with a  
25 term of years. It was -- in one of the cases there

1 was 13 months rent left and in another of the cases  
2 the key tenant was not renewing so the money was  
3 going away.

4           So in those cases, if you took away  
5 months 1 and 2 of rent, you weren't able to replace  
6 them with new loans 13, 14 and 15 as you are in  
7 these cases where total revenues are perpetual. And  
8 that's -- and the employer contributions are  
9 perpetual. And the excise tax and motor vehicle  
10 fees that the HTS, the highway bondholders have  
11 security interests in. And those numbers and those  
12 facts are in the record in the stipulations that  
13 were put in to the District Court.

14           I'm not sure -- I've lost track of the  
15 time here. I think I'm probably way over. I have  
16 one more point that I ask your indulgence.

17           THE COURT: Please make your point.

18           MR. LUSKIN: Okay. I apologize. I'm  
19 going to -- I do think the perpetual revenue stream  
20 distinguishes these cases from the typical cash  
21 collateral situation and the hypothetical that Judge  
22 Kayatta has put forward.

23           And I -- I'll end by making the point  
24 that the standard that the Oversight Board is  
25 advocating is a balancing of a variety of factors



1 without giving any one factor complete priority is  
2 not a new or unfamiliar standard. I mean, courts  
3 constantly weigh factors to assess cause in many  
4 situations where the statute doesn't list them or  
5 give examples. PROMESA uses cause in only two  
6 instances, one of them is the one we've been talking  
7 about, the other one does not list reasons.

8         The bankruptcy code and the bankruptcy  
9 rules authorize courts to pact for cause or for  
10 cause shown in 71 separate spots, by my count, of  
11 which reasons or examples are given in only 10. The  
12 Federal Rules of Appellate Procedure authorize this  
13 Court to act for good cause in seven instances and  
14 in none of them is an example given.

15         Courts do not need examples to figure  
16 out what the material relevant factors are, and  
17 if -- in your hypothetical, if the facts presented  
18 are like your hypothetical and constitutional issues  
19 are implicated then, yes, that factor may come to  
20 the fore.

21         But here, that is not what we have.  
22 There is no damage. There is no need for adequate  
23 protection. If there were need for adequate  
24 protection it's there in the equity cushion and the  
25 equity cushion in this case is different because of

1 the perpetual revenue. There's -- I think that  
2 absent any further questions from the Court I should  
3 stop. I've gone way over my allotment.

4 THE COURT: I have one.

5 MR. LUSKIN: I'm sorry, yes.

6 THE COURT: In terms of the approach  
7 that you are advocating to take, I'm sure you read  
8 Judge Besosa's Brigade case?

9 MR. LUSKIN: Yes.

10 THE COURT: Are you advocating  
11 something more along those lines?

12 MR. LUSKIN: I think Judge Besosa was  
13 not as express as I have been in -- in our brief of  
14 listing the particular factors. I think in fact,  
15 what Judge Besosa did is decide that he has to  
16 balance all of the factors and that among the  
17 factors that he was required to include or to assess  
18 was adequate protection and I think he did that. I  
19 would, speaking for the Oversight Board, like to see  
20 a decision from this Court is that is more express  
21 and that could be -- and more expansive on the  
22 balancing that makes it clear that the PROMESA  
23 regime pre-petition is different from the bankruptcy  
24 regime post-filing of the Title III case for  
25 instance, so that in other cases we have guidance

1 and Judge Besosa has more guidance, so yes.

2 THE COURT: Thank you.

3 MR. LUSKIN: Thank you very much.

4 And, again, I apologize for going over.

5 THE COURT: Not at all.

6 MR. BRUNSTAD: Thank you, your Honor.

7 Judge Thompson, there is no evidence in the record  
8 whatsoever of an equity cushion for Peaje and its  
9 bonds. Zero. Counsel paints a rosy picture that  
10 there will be enough money, et cetera, there is zero  
11 evidence in the record to substantiate those claims.

12 We didn't have an evidentiary hearing.  
13 We had an expert witness who was going to testify  
14 about the projections and things, that was not  
15 allowed. These bonds are going to go out for  
16 19 years. Taking the cash today and spending it is  
17 real harm.

18 Judge Kayatta, the burn right now is a  
19 hundred percent, they are burning a hundred percent  
20 of the cash. Section 405(k) of PROMESA says they're  
21 not supposed to be impairing our collateral during  
22 the so-called quiet period. They are not  
23 maintaining the status quo, they are impairing our  
24 collateral yet they're violating the very statute  
25 they seek shelter under and saying there's no cause

1 for lifting the stay. Even though they are not  
2 complying with the statutory regime they are  
3 supposed to be honoring they are impairing our  
4 collateral and they are doing it in a way that is  
5 causing us harm.

6           Why should they have the burden? They  
7 have all of the information. We do not. They know  
8 what the protected revenues are. We do not.  
9 They -- only they know when they will stop taking  
10 our collateral. We don't know, we can't gaze into  
11 the crystal ball. They have refused to take a  
12 position on when they will stop taking our  
13 collateral. They have tipped their hand in this  
14 proceeding before the Court. They basically have  
15 said "We will continue taking the collateral. We  
16 make no commitment to when we'll stop taking the  
17 collateral."

18           And they're adequately protected  
19 because they have a lawsuit, an unsecured claim.  
20 They can sue us later for taking their collateral.  
21 But the third circuit said --

22           THE COURT: Counsel, so if there had  
23 been a hearing and you had put your expert on --

24           MR. BRUNSTAD: Correct.

25           THE COURT: -- would your expert have

1 simply said "We don't know"?

2 MR. BRUNSTAD: Our expert would have  
3 said looking at the -- what information we were able  
4 to get from them, the projected revenues may well  
5 not be enough to cover all of the future obligations  
6 and make up for what they're taking now.

7 Remember, the way this works is cash  
8 is being collected, total revenues are being  
9 collected and as they come in were supposed to be  
10 put into the accounts to make sure there's enough  
11 there to make the next payment. They stopped doing  
12 that last May. There was enough in there at that  
13 time to cover us through this month. But because  
14 they're not putting any more of those total revenues  
15 in, when we get to July there will be nothing there  
16 to pay us. We will be in default. And their  
17 argument is, "Well, we'll just continue to take the  
18 property and you can sue us later. You can have an  
19 unsecured claim a lawsuit against us for taking your  
20 property."

21 But as the Third Circuit said in the  
22 Rocco case we cite on pages 22 and 23 of our reply  
23 brief, "A lawsuit is too speculative in nature to  
24 offer adequate protection." And the reason for that  
25 is because substituting a lawsuit, a future right to

1 sue is never the same as cash in the bank today.  
2 They are going around saying "We don't have enough  
3 money to pay anybody, but trust us, we can spend all  
4 of your collateral today and we'll pay you in the  
5 future." Judge --

6 THE COURT: Yeah, go ahead.

7 MR. BRUNSTAD: You asked us for cites  
8 to where we argue that this is going to harm us and  
9 it's not going to be enough below.

10 THE COURT: I asked for a cite where  
11 you told the judge below that your debt -- the debt  
12 itself was not going to get repaid absent release  
13 from the stay.

14 MR. BRUNSTAD: Now recall, Judge  
15 Kayatta, we were not able to have our evidentiary  
16 hearing to come and make our arguments before the  
17 Court and --

18 THE COURT: I'm just looking at a very  
19 long motion in which you specified the harm, and as  
20 I read that harm, you were simply saying that the  
21 collateral itself is being reduced. I did not see  
22 any claim, and maybe I missed something, which is  
23 why I --

24 MR. BRUNSTAD: Let me do the best I  
25 can.

1 THE COURT: Okay.

2 MR. BRUNSTAD: I'll give you three

3 cites. The joint appendix page 32, paragraph 43.

4 The joint appendix page 35, paragraph 50. And the

5 joint appendix page 171 at paragraph -- at paragraph

6 4.

7 THE COURT: And then to follow up on

8 Judge Thompson's question, were -- did the judge

9 deny you any discovery that you sought to do?

10 MR. BRUNSTAD: We sought -- we sought

11 to get the financial projections of the revenues,

12 what they were likely to be, so our expert witness

13 could try to prepare and come up and see whether

14 those projections were going to be adequate.

15 Judge -- Judge Besosa, over their objection, did

16 require them to give us those projections about the

17 future revenues. And based upon that evidence, our

18 expert was going to testify that the future revenues

19 are likely to be insufficient to allow us not only

20 to be paid in full going forward, but to make up for

21 what they're spending currently.

22 THE COURT: I think let me ask my

23 question again. Did Judge Besosa deny you any

24 discovery that you tried to do?

25 MR. BRUNSTAD: He did not.

1 THE COURT: Okay.

2 MR. BRUNSTAD: But remember your Honor

3 the key point that I'd like to reiterate, it was our  
4 burden to show -- we have a security interest,  
5 that's undisputed. It was our burden to show that  
6 basically they're taking our collateral, they're  
7 dissipating it. That's undisputed. Those are  
8 undisputed facts.

9 With that prima facie case made, it is  
10 their burden to show that it's not causing us any  
11 harm. And all you have heard from them today is,  
12 "Well, if there's any harm from this you can sue us  
13 in the future with a speculative lawsuit", you know,  
14 against us, even though they claim they don't have  
15 any money. Again, that's not adequate protection.

16 And the reason why it must be their  
17 burden to show adequate protection, again is because  
18 they have the information -- in addition, one key  
19 fact that's necessary to do the calculations is when  
20 will they stop taking the collateral? Because,  
21 Judge Kayatta, this case is your hypothetical if  
22 they just keep taking the collateral into the  
23 future. The burden is a hundred percent if  
24 they -- if they keep going and going and going and  
25 going as they plan --



1 THE COURT: But the regime changes in  
2 May at the latest, right?

3 MR. BRUNSTAD: Well, but Judge  
4 Kayatta, what happens at that point is we then  
5 substitute nearly one stay for another. When they  
6 file for bankruptcy they then get the automatic stay  
7 and then we have more hearings and more delay so we  
8 get one year, two years, perhaps, after the fact  
9 where they continue to take our collateral. Each  
10 day they continue to take our collateral the hole  
11 gets bigger and bigger and bigger and bigger and the  
12 problem becomes a problem akin to what happens with  
13 poor debtors who get behind on their mortgage  
14 payments. They may be able to make the payment in  
15 the future, but they never catch up on the arrears,  
16 and in the end the collateral isn't going to be  
17 sufficient to cover the hole. And again, it's not  
18 sufficient, the remedy they suggest is not  
19 sufficient, that we can just sue them in the future  
20 and get an unsecured claim against them for money  
21 damages they basically say they don't have the funds  
22 to pay.

23 So taking collateral today without  
24 adequate protection is real harm. That's -- under  
25 the borrowed canon -- the Borrowed Statute Canon we

1 take the subtle meaning of the adequate protection  
2 concept, which was designed to protect secured  
3 parties just like Peaje in this case.

4         The balancing test that opposing  
5 Counsel advocates is a test under which relief would  
6 never be granted, because in their view really the  
7 only thing that matters is to have this quiet  
8 period. Well, that would be all right --

9         THE COURT: This is beginning to  
10 become a run-on sentence.

11         MR. BRUNSTAD: Yes, your Honor. Thank  
12 you very much.

13         MS. SOOKNANAN: Your Honor, I just  
14 have three brief points in rebuttal. First with  
15 respect to the burdens. Whoever bears the burden it  
16 is clear that in this case below we met our burden.  
17 We showed cause, we showed that we were secured  
18 creditors with a lien on property, that they are  
19 diverting our property and that we are not  
20 adequately protected.

21         THE COURT: Where's the evidence that  
22 we should have looked at that would cast serious  
23 doubt on the \$19 million per month income stream  
24 that is being paid by the non-stay --  
25 non-Commonwealth?

1 MS. SOOKNANAN: Your Honor, the  
2 evidence is in the stipulated facts itself, it's all  
3 the statements by these very entities saying that  
4 those contributions are uncertain. They cannot on  
5 one hand point to that future revenue stream and  
6 point to these hypothetical payments and then say  
7 "By the way, those are uncertain, we don't know that  
8 they will be paid." And remember, an evidentiary  
9 hearing was scheduled in this case.

10 The Commonwealth suggests, goes as far  
11 as to say it was incumbent upon us to notify the  
12 Court that we had other evidence to submit. That --  
13 it's somewhat disingenuous to say that.

14 To understand the timing, a hearing  
15 was scheduled for November 3rd. The day before the  
16 parties submitted joint stipulations which we had  
17 gotten together and agreed to in order to streamline  
18 the hearing. Everyone was fully aware that there  
19 were other points that parties intended to meet, we  
20 notified the Court that morning that there would be  
21 expert testimony.

22 So the suggestion that we should have  
23 somehow told the Court that we had other evidence,  
24 or that it was clear to the Court that these  
25 stipulations were the entire record that the parties

1 had agreed to is frankly absurd, these were filed on  
2 November 2nd and the hearing was cancelled on  
3 November 2nd.

4 THE COURT: But as to the 19 million a  
5 month, Mr. Chesley told us that what wasn't  
6 uncertain were the non-government contributions.

7 MS. SOOKNANAN: That is -- that is not  
8 what we have a said, your Honor. The Commonwealth  
9 in October in its fiscal plan said that those  
10 contributions of municipalities themselves was  
11 uncertain. That's what they wrote in their fiscal  
12 plan and they are saying here today that they are  
13 certain. I mean, they are saying essentially that  
14 all secured debt of Puerto Rico will be paid in  
15 full.

16 That's what they suggested today and  
17 yet they repeatedly say otherwise in pages and pages  
18 of their brief talking about how they do not have  
19 money to pay their creditors. They do not -- they  
20 cannot meet their debts. And neither the  
21 Commonwealth nor the ERS addressed today their prior  
22 statements that these contributions are uncertain.

23 And with respect to the monthly  
24 contributions, your Honor, it's currently  
25 \$13.9 million in payments. Those are interest

1 payments only that go through 2020. In 2020,  
2 principal payments kick in and that gets bumped up a  
3 significant amount.

4 I mean, at the end of the day, there  
5 was a hearing scheduled that we were entitled to,  
6 statutorily entitled to under PROMESA where we would  
7 have an expert testify, where the Commonwealth would  
8 put forth evidence on the adequate protection  
9 question. And at a minimum we are entitled to that  
10 hearing and the District Court (indecipherable). We  
11 cancelled the night before it was to be held and on  
12 the same day that these stipulated facts were  
13 submitted.

14 One more brief point, the  
15 Commonwealth -- I apologize if I'm over -- but the  
16 Commonwealth has -- you know, in discussing what an  
17 extraordinary case would be has said that this Court  
18 may not be concerned because what we're dealing with  
19 here is money and cash collateral and that can be  
20 repaid. And in bankruptcy cash collateral is  
21 actually entitled to the most protection because  
22 once it's been dissipated and spent there's nothing  
23 left. And all that will be left here at the end of  
24 it, once they have dissipated and spent her money,  
25 as they have admitted, is an unsecured claim. That

1 is not enough. The Constitution requires more.

2 Thank you.

3 THE COURT: After the clerk adjourns  
4 us I'd like Counsel to remain at the table, one or  
5 more of us is going to come to the well to say  
6 hello. There's nothing else, I take it? Well  
7 argued. Thank you. We'll do the best we can.

8 (Proceedings concluded.)

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1 STATE OF MICHIGAN )

2 ) SS

3 COUNTY OF GENESEE )

4 I, Quentina R. Snowden, do hereby state  
5 that the foregoing document was reduced to  
6 typewritten form by me from digital media, and  
7 that it represents a complete, true and correct  
8 rendition, to the best of my abilities, of the  
9 proceedings held in this cause.

10 I assume no responsibility for any  
11 inaudible portions, if any, by any speakers that  
12 are not discernible during the proceedings.

13 I further certify that I am not  
14 connected by blood, or marriage with any of the  
15 parties; their attorneys or agents; and that I am  
16 not interested, directly, indirectly, or  
17 financially, in the matter of controversy.

18  
19 Dated: May 27, 2017

20  
21 \_\_\_\_\_  
22 Quentina R. Snowden, CSR-5519  
23 Notary Public, Genesee County, Michigan  
24 My commission expires: 1/4/2018  
25

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